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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,882	02/23/2004	Craig French	3426-0108P	7102
2292 7590 12/19/2006 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER LUPINO, GINA M	
			ART UNIT 3652	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS		MAIL DATE 12/19/2006	DELIVERY MODE PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/782,882

Applicant(s)

FRENCH, CRAIG

Examiner

Gina M. Lupino

Art Unit

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

I. Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement.

37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

II. Specification

Content of Specification

Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:

Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."

1. The listing of references in the specification is not a proper information disclosure statement.

37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper."

2. The following references are discussed in "Background of the Invention" but not listed in the Information Disclosure Statement:

2.1. 4,703,969 (Rayburn)

2.2. 4,585,264 (Miller)

2.3. 5,332,166 (Kepes)

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3. Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.
4. Appropriate correction is required.

III. Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Several terms used in the claims are inconsistent with terms used in the specification and are not indicated on any drawings.
2. In claim 1, "lifting arms" must be shown on a drawing.
3. In claims 1, 9, 17 "rack members" must be shown on a drawing.
4. In claims 5, 6, "support arms" must be shown on a drawing.
5. In claims 6, 7, "fulcrum arms" must be shown on a drawing.
6. In claims 12 and 13, "locking device" and "securing rack" must be shown on a drawing.
7. In claim 14, "main frame arms" must be shown on a drawing.
8. In claim 15, "horizontal lateral cross member" must be shown on a drawing.
9. Therefore, these features must be either shown on a drawing or canceled from the claim(s).

No new matter should be entered.
10. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement

sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

IV. Claim Objections - 35 USC § 102

1. Claim 18 is objected to because it contains a grammatical error. Claim 18 states "...aspindle" but should state, "--a spindle--".

V. Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 3, 5, 6, 15, 16, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by SCHWEIN (U.S. Patent No. 4,095,706).
 - 1.1. With respect to claim 1, SCHWEIN discloses a loading apparatus comprising:
 - 1.1(a) A main frame 16 supported by a plurality of wheels 38; the main frame including a pair of spaced-apart supports arms 44, 32 extending in a longitudinal direction of the loading apparatus;

1.1(b) A lifting frame 49 pivotally attached to said main frame 16, said lifting frame 49 including a lever arm 64 and a pair of spaced-apart lifting arms 72 operably connected thereto, the pair of lifting arms extending in the longitudinal direction of the loading apparatus, the pair of spaced-apart arms of the lifting frame 72 in conjunction with the support arms of the main frame defining a spool receiving volume in the rear of the loading apparatus;

1.1(c) A support rack 42 attached to said lifting arms 72, said support rack 42 comprising a pair of spaced-apart rack members 42, said rack members being configured to support a spool 14, each rack member capable of extending vertically from one of the lifting arms; and

1.1(d) A connecting device 114, 124, 126, 139 for connecting said lifting frame 49 to the main frame 16 to prevent pivoting movement of said lifting frame 49.

1.2. With respect to claims 3, 5, 6, 15, 16, 18, and 19, SCHWEIN discloses a loading apparatus, as discussed above, and:

1.2(a) With respect to claim 3, a main frame 16 that includes a tongue 28 with a hitch 24 mounted at the front of said tongue 28 for towing loading apparatus.

1.2(b) With respect to claim 5, main frame 16 includes a tongue 28 connected to support arms 42.

1.2(c) With respect to claim 6, support arms 42 include a pair fulcrum arms 75 extending upwardly diagonally therefrom.

1.2(d) With respect to claim 15, a lifting frame 49 that includes a horizontal lateral cross member 52 interconnecting forward ends of spaced-apart lifting arms 72 and to which a rearward end of a lever arm 64 is attached.

1.2(e) With respect to claim 16, loading apparatus is adapted to carry bales 14 held in place by bale penetrating bars 92. See Figures 1 and 2, column 3, lines 41-43.

1.2(f) With respect to claim 18, loading apparatus is adapted to carry bales 14 held in place by bale engaging and holding members 42, 44, rotatably mounted on a spindle and are held in place by collars 85. See Figures 1-3, column 2, lines 40-50.

1.2(g) With respect to claim 19, engaging and holding members 42, 44 are rotatable over spindle allowing bale to unroll.

2. Claims 1, 3, and 14, are rejected under 35 U.S.C. 102(b) as being anticipated by DEARBORN (U.S. Patent No. 6,305,894).

2.1. With respect to claims 1, DEARBORN discloses a loading apparatus comprising:

2.1(a) A main frame 10 supported by a plurality of wheels 16 and a pair of spaced-apart supports arms 44, 32 extending in a longitudinal direction of loading apparatus,

2.1(b) A lifting frame 26 pivotally attached to main frame 10, lifting frame 26 including a lever arm 28 and a pair of spaced-apart lifting arms 12 operably connected thereto, the pair of lifting arms extending in the longitudinal direction of the loading apparatus, the pair of spaced-apart arms of the lifting frame in conjunction with the support arms of main frame defining a spool receiving volume in the rear of the loading apparatus (See Figures 2-3).

2.1(c) A support rack 34 attached to said lifting arms 12, support rack 34 comprising a pair of spaced-apart rack members 34, rack members being configured to support a spool, each rack member capable of extending vertically from one of the lifting arms, and

2.1(d) A connecting device for connecting said lifting frame 26 to the main frame 10 to prevent pivoting movement of said lifting frame 26.

2.2. With respect to claims 3 and 14, DEARBORN discloses the loading apparatus as discussed above and:

2.2(a) With respect to claim 3, a main frame 10 with a tongue 20, 22 with a hitch 24 mounted at the front of the tongue.

2.2(b) With respect to claim 14, main frame 10, tongue 20, 22, and hitch 24 as discussed above, where main frame includes a horizontal lateral cross member 14 interconnecting forward ends of said spaced-apart support arms and to which a rearward end of the tongue 20, 22 is attached.

VI. Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over SCHWEIN in view of BILLS (U.S. Patent No. 4,701,098).

1.1. With respect to claim 4, SCHWEIN discloses a loading apparatus with a main frame 16 supported by a plurality of wheels 38, a lifting frame 49 pivotally attached to said main frame 16, said lifting frame 49 including a lever arm 64 and a pair of spaced-apart lifting arms 72 operably connected thereto, a support rack 42 attached to said lifting arms 49, said support rack 42 comprising a pair of spaced-apart rack members 42, said rack members being configured to support a spool, and a connecting device for connecting said lifting frame 49 to the main frame 16 to prevent pivoting movement of said lifting frame 49.

1.2. However, SCHWEIN fails to teach a U-shaped yoke fastened to a vertical support member extending upwardly from a main frame. BILLS teaches a U-shaped yoke adapted to receive one end of a spindle and move the spindle into the bearing carriers 78 and 80,

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which are pivotally secured to bearing portion 82 by means of a pin 86. See claim 7, column 3 lines 61-68, and column 4 lines 1-5.

1.3. Thus, it would have been obvious to one of ordinary skill in the art to modify SCHWEIN with the U-shaped yoke of BILLS in order to receive and fasten the vertical support member 21 to the lifting arms.

2. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHWEIN in view of COWLES (U.S. Patent No. 4,213,729).

2.1. With respect to claim 7, SCHWEIN discloses a loading apparatus as discussed above, a tongue 28, and a pair of spaced-apart support arms 42 that include a pair fulcrum arms 75 extending diagonally upwardly. However, SCHWEIN fails to teach a trapezoidal plate joining upper ends of the fulcrum arms where the fulcrum arms form a triangle, the two bottom corners of the triangle are fastened to a trailer, and the trapezoidal plate is at an apex of the triangle. COWLES teaches a rectangular flat plate 37A that is integrally affixed to a leg 35 and is not rotatable relative to leg 35 but rather rotates with leg 35 as a fixed entity. See column 9, lines 8-40. Therefore, it would have been obvious to one of ordinary skill in the art to modify SCHWEIN with the rotatable flat plate of COWLES in order to join both fulcrum arms together to form a triangle.

2.2. With respect to claim 8, SCHWEIN discloses the loading apparatus discussed above. However, SCHWEIN fails to teach trapezoidal plates with holes drilled, cast, cut, or stamped in them to accommodate a pin and to function as a fulcrum. COWLES teaches a circular opening 37B machined into rectangular flat plate 37A that accommodates a rod 39. See column 9, lines 35-40, 55, column 10, lines 13-16. Therefore, it would have been obvious to one of ordinary skill in the art to modify SCHWEIN with the plate of COWLES in order to have a rotatable plate with a hole that can accommodate a pin and function as a fulcrum. See column 9, lines 35-68, and column 10, lines 1-50.

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3. Claims 9, 10, 12, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHWEIN in view of BOGAR (U.S. Patent No. 4,108,313).

3.1. With respect to claims 9, 10, 12, and 17, SCHWEIN discloses the loading apparatus, as discussed above. However, SCHWEIN fails to teach a rack with U-shaped pockets where:

3.1(a) With respect to claim 9, pockets positioned at various heights.

3.1(b) With respect to claim 10, pockets are a plurality of sizes to accommodate various spool and spindle diameters.

3.1(c) With respect to claim 12, rack members have a locking device and a securing rack capable of holding spindles in pockets.

3.2. With respect to claim 17, SCHWEIN discloses the loading apparatus, as discussed above, where the apparatus is adapted to carry bales using bale-penetrating bars. However, SCHWEIN fails to teach:

3.2(a) a rack with U-shaped pockets where the pockets in rack members are capable of supporting bale-penetrating bars.

3.3. BOGAR teaches:

3.3(a) With respect to claim 9, a rack with U-shaped pockets 12 at various heights. See Figures 1, 2, 5 and column 4, lines 44-50. Therefore, it would have been obvious to one of ordinary skill in the art to modify SCHWEIN with the rack of BOGAR in order to form a resting and securing place for ends of spindles upon which the spools are positioned.

3.3(b) With respect to claim 10, a rack, as discussed above, with U-shaped pockets capable of accommodating different sized rifles. See Figures 1, 2, 5 and column 4, lines 44-50. Therefore, it would have been obvious to one of ordinary skill in the art to modify SCHWEIN with a rack with open-channel U-shaped pockets, as in BOGAR, in order to accommodate various spool and spindle diameters.

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3.3(c) With respect to claim 12, a rack 10 mounted to a vehicle by brackets 60 with pockets 16 capable of holding spindles. Therefore, it would have been obvious to one of ordinary skill in the art to modify SCHWEIN with the brackets of BOGAR in order to receive, hold, and secure spindles in pockets.

3.3(d) With respect to claim 17, rack has pockets 16 that are capable of supporting bars. Therefore, it would have been obvious to one of ordinary skill in the art to modify SCHWEIN with the rack pockets of BOGAR in order to support bale-penetrating bars.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over SCHWEIN in view of HENDERSON (U.S. Patent No. 5,203,658).

4.1. With respect to claim 11, SCHWEIN discloses a loading apparatus as discussed above that could secure a spool or bale 14 in position on a spindle 68.

4.2. However, SCHWEIN fails to teach a spool secured into position on a spindle using locking and centering collars or lynch pins on both sides of the spool.

4.3. HENDERSON teaches guide members 14 that have removable pivot or lynch pins 16 at their lower ends 15 to connect the side frames 7 to the chassis 2. Therefore, it would have been obvious to one of ordinary skill in the art to modify SCHWEIN with the lynch pins of HENDERSON in order to secure a spool into position on a spindle.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over SCHWEIN in view of BOGAR (U.S. Patent No. 4,108,313) and HENDERSON (U.S. Patent No. 5,203,658).

5.1. With respect to claim 13, SCHWEIN discloses a loading apparatus as discussed above.

5.2. However, SCHWEIN fails to teach a rack mounted to a vehicle, with pockets, capable of holding spindles, and kept into a desired position by a spring loaded locking device.

5.3. BOGAR teaches a vehicle-mounted rack with pockets 48, which is capable of holding spindles, as discussed above. Therefore, it would have been obvious to one of ordinary

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skill in the art to modify SCHWEIN with the brackets of BOGAR in order to make a rack capable of holding, securing, and locking spindles into pockets.

5.4. HENDERSON teaches a traverse pin 19 locked in position by a spring biased locking pin

25. See column 3, lines 11-13. Therefore, it would have been obvious to one of ordinary skill in the art to modify SCHWEIN with the spring biased locking pin of HENDERSON in order to secure the rack into a desired position using a spring loaded locking device.

VII. Response to Applicant's Arguments

Applicant's arguments entered September 8, 2006 have been fully considered.

1. Applicant's arguments with respect to the rejection of claims 7, 12, 14, 15, 17, and 18 under 35 USC § 112 are persuasive.

2. Applicant's arguments with respect to the rejection of claims 1, 3, 5, 6, 14-16, and 18-20 under 35 U.S.C. 102(b) are not persuasive.

2.1. With respect to claim 1, Applicant argues the combination of elements as set forth in independent claim 1, as amended, is not disclosed or made obvious by the prior art of record, including SCHWEIN and DEARBORN. Applicant also argues SCHWEIN and DEARBORN fail to show or describe all of the claimed features recited in independent claim 1. The Examiner disagrees with the Applicant.

2.2. With respect to claim 1, SCHWEIN teaches, as discussed above, a main frame, a lifting frame, a support rack, and a connecting device.

2.3. With respect to claim 1, DEARBORN teaches, as discussed above, a main frame, a lifting frame, a support rack, and a connecting device.

3. Applicant's arguments with respect to the rejection of claims 9, 10, 12, 13, and 17 under 35 U.S.C. 103(a) are not persuasive.

3.1. With respect to claims 9, 10, 12, 13, and 17, Applicant argues one of ordinary skill in the art would not look to BOGAR to modify SCHWEIN because:

3.1(a) A gun-rack is non-analogous art when compared to bale handling apparatus, and

3.1(b) The problem solved by BOGAR allows the spacing of brackets to be adjustable with respect to a vehicle window, which has nothing to do with the present invention.

3.2. First, in response to Applicant's argument that a gun-rack is non-analogous art when compared to bale handling apparatus, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the gun rack is reasonably pertinent to the particular problem with which the applicant was concerned because it is a vehicle-mounted rack with vertically positioned U-shaped pockets that are capable of holding bars.

3.3. Also, in response to Applicant's argument that the problem solved by BOGAR, of allowing the spacing of brackets to be adjustable with respect to a vehicle window, has nothing to do with the present invention, BOGAR clearly teaches key elements of the present invention, specifically, a rack, with U-shaped pockets, placed at various heights along the side of a vehicle, and the rack is capable holding different sized spindles or bars.

VIII. Conclusion

1. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina M. Lupino whose telephone number is (571) 272-6557. The examiner can normally be reached on 8:30am - 5:00pm EST.
4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
6. GML


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